Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-152
	)	
	)	
Telemessaging, Electronic Publishing, and Alarm Monitoring Services	)	

REPLY COMMENTS OF AMERITECH

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TABLE OF CONTENTS

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In the Matter of	)	
	)	
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Ameritech respectfully files these Reply Comments in the above-captioned matter, addressing a limited set of issues presented in the Comment cycle.

I. Section 274 Applies Only to Electronic Publishing Provided Over "Basic Telephone Service"

In its Comments, Ameritech noted that because Section 274 coverage is limited to electronic publishing disseminated by the BOC's "basic telephone service," Section 274 does not apply to electronic publishing in which the database used to provide the service is located outside the BOC's service territory.[1] In those situations, all the BOC would at most be providing is "exchange access," rather than "exchange service."

Ameritech's position is supported by the comments of others; even Time Warner agreed that:

> (t)he Section 274 safeguards apply only to those electronic publishing activities of a BOC, a BOC joint venture or a BOC affiliate which utilize the local exchange services of the BOC or its affiliate for transmission. It

[1] Ameritech at 7-8.

logically follows that because the use of a BOC's local exchange services triggers the safeguards of Section 274, the out-of-region electronic publishing operations of a BOC, or its affiliates or joint ventures are not subject to Section 274's safeguards (because those out-of-region operations do not use the BOC's local exchange services).[2]

This limitation on the coverage of Section 274 makes eminent sense because, as even Time Warner concedes, "the BOC does not enjoy monopoly power over local exchange facilities outside its service region."[3] AT&T makes the same concession, noting that the purpose of Section 274 is to "protect against the BOCs' use of their local exchange services to gain unfair advantage...".[4] Obviously, a database outside the BOC's service territory does not utilize that BOC's local exchange services.

II. Section 275 Expressly Defines the Meaning of Alarm Monitoring

In its Comments, US West states that "[i]n light of the fact that it was providing ["Scan Alert" and "Versanet" services to alarm monitoring companies] as of November 30, 1995, US West and its affiliates may provide alarm monitoring services on a going-forward basis pursuant to Section 275(a)(2)."[5]

To the extent that US West believes that it can continue to offer Scan Alert and Versanet only if these services are found to be "alarm monitoring services, US West's belief is mistaken. As stated by BellSouth, if a BOC's transmission offering to alarm monitoring companies "is not an 'alarm monitoring service' under Section 275(e), then

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[2] Time Warner at 5.

[3] Id.

[4] AT&T at 9.

[5] US West at 31.

the prohibition of Section 275(a)(1) is not applicable and the grandfathering provisions of Section 275(a)(2) are not needed for [the BOC] to offer the service."[6]

In paragraph 69 of the NPRM, the Commission referenced Section 272(a)(2)(C) -- a section of the Act which refers to "information services, other than... alarm monitoring services...". US West does not challenge the proposition that this language shows that in order for a service to be an "alarm monitoring service", it has to be "an information service." Nor does US West claim that either Scan Alert or Versanet are information services. Indeed, for US West to claim that either Scan Alert or Versanet are information services, it would be taking the position that it violated the MFJ by offering information services before the MFJ's information service ban was removed.[7]

US West divides Section 275(e)'s definition of alarm monitoring service into five "elements", one of which is "the transmission of [CPE generated] signals."[8] With respect to Scan Alert and Versanet, this "transmission" is the only element that US West claims it provides. Surely, transmission of a signal from alarm CPE is not sufficient to make the transmission service into an "alarm monitoring service." If it was, every LEC whose service territory includes premises with dial-up alarm CPE would be considered to be an alarm service provider merely because the LEC would, via its switched network, handle transmission of the call from the alarm CPE.

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[6] Bell South at 23 n.66.

[7] The MFJ's information service ban was lifted in 1991. United States v. Western Elec. Co., 767 F.Supp. 308 (D.D.C. 1991). These services were offered prior to 1991. See also Joint Explanatory Statement at 115-116 (Conference Committee adopts House definition of information service which is based on the definition used in the MFJ.)

[8] US West at 26-27.

BellSouth argues that "engag[ing] in the provision of alarm monitoring services" only takes place for a nongrandfathered BOC when it acquires an equity interest in or obtains financial control of an unaffiliated alarm monitoring service entity.[9] It is true, as BellSouth states, that a grandfathered BOC "may enter [into] relationships with nonaffiliated entities as long as those relationships do not constitute an 'equity interest' or 'financial control'."[10] However, this limitation on how a grandfathered BOC may grow its alarm business has nothing to do with what constitutes engaging in the provision of alarm monitoring service.

AICC merely repeats the arguments it made regarding the scope of Section 275(a)(2) in its filings relative to its Motion for Orders to Show Cause and to Cease and Desist regarding Ameritech's acquisition of the alarm monitoring business of Circuit City Stores, Inc.[11] These arguments were rebutted by Ameritech in its September 6, 1996 response to the Motion,[12] which is incorporated by reference herein.

Section 275(a)(2) prohibits the grandfathered BOC from "acquir[ing] any equity interest in, or obtain[ing] financial control of, any unaffiliated alarm service entity". In its Comments, AICC states that the term "equity interest" should be defined "as any ownership of a company by stock or partnership shares."[13] In other words, AICC

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[9] BellSouth at 24.

[10] Id.

[11] Motion for Orders to Show Cause and to Cease and Desist, No. 96-17 (August 12, 1996); Reply Comments of Alarm Industry Communications Committee, No. 96-17 (September 13, 1996).

[12] Comments of Ameritech on AICC's Motion for Orders to Show Cause and to Cease and Desist, No. 96-17 (Ameritech's September 6, 1996 Comments).

[13] AICC at 24.

concedes that the ban on acquiring an equity interest does not prohibit asset acquisition. Rather, it asserts that the acquisition of the assets of an alarm monitoring entity constitutes obtaining "financial control" over the entity. AICC states that:

> As broadcast cases on the issue of what constitutes control prove, the definition of control encompasses every form of control, actual or legal, direct or indirect, negative or affirmative. Accordingly, financial control should be defined to include ownership of the assets through a purchase of all or part of the assets of an unaffiliated alarm monitoring service entity.[14]

The quantum leap to the language after "[a]ccordingly" is a total non sequitur.

One needs to look no further than to Section 274 to find a definition of "control". There, Congress incorporates the definition of "control" set forth in Rule 405 under the Securities Act of 1933 and Rule 12b-2 under the Securities Exchange Act of 1934 which provides that control is "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." That definition does not directly apply to Section 275, which employs the narrower formulation "financial control." But even under the broader SEC definition, a mere sale of assets from an alarm company to Ameritech would not give the latter "control" of that alarm company because Ameritech would not possess the power to direct or cause the direction of the management and policies of the company as a result of the asset sale transaction.

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[14] Id. at 25 (internal quotation marks and brackets removed; emphasis added.) The first part of the quoted language comes from a case where the issue was whether one corporation controlled another corporation. Rochester Tel. Corp. v. United States, 23 F.Supp. 634, 636 (W.D.N.Y. 1938).

The meaning of the term "financial control" can be seen from its use in Commission broadcast licensing cases.[15] The term refers to the situation where one individual or entity, by control over the "purse strings," has continuing de facto control over another nominally independent entity -- e.g., over the existing licensee or applicant. The D.C. Circuit has referred to these cases as those involving "Financial Control/Real Party In Interest" issues.[16] The term clearly does not cover asset acquisitions. An asset acquisition does not raise any real party in interest issues. It does not give the acquiring entity any type of control over the entity selling the assets, de facto or otherwise. It does not give the acquiring entity any control of the "purse strings" of the seller. Rather, the ownership and management of the seller is preserved. As Ameritech stated in its September 6, 1996 Comments on AICC's Motion:

> Quite simply, an acquisition of even 100% of the alarm monitoring assets of a company does not give the acquirer financial control over that company. Rather, precisely because only the assets have been acquired, the company remains under the same ownership and financial control as it had been before the acquisition. It can remain in business conducting its remaining operations (just as Circuit City has done after the sale of its alarm monitoring assets to Ameritech) and/or it can enter into new operations. Decisions about its financial destiny will be made by its officers, directors, and shareholders, not by the company that acquired its alarm monitoring assets.[17]

The cases cited by AICC in no way support its attempt to equate asset acquisitions with financial control. To the contrary, they all involve the issue of

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[15] See, e.g., Lowery Communications, 7 F.C.C. Rcd. 7139, 7149 (1992) (reference to "financial control" line of cases).

[16] Weyburn Broadcasting v. FCC, 984 F.2d 1220, 1226 (D.C. Cir. 1993).

[17] Ameritech's September 6, 1996 Comments at 7.

whether one person or entity has de facto control over another entity. For example, in one of the cited cases, the Commission stated that "a realistic definition of the word 'control' includes any act which vests in a new entity or individual the right to determine the manner or means of operating the licensee and determining the policy that the licensee will pursue."[18] These cases would be applicable if Ameritech were to dictate the operations of a nominally independent alarm monitoring entity via "control of its purse strings." But they have no bearing on the situation in which Ameritech purchases the assets of an alarm monitoring entity, integrates those assets into its own operations, and exerts no "control of the purse strings" of the seller after the sale.[19]

Section 275(a)(2), after stating the ban on equity acquisitions and on obtaining financial control of unaffiliated alarm monitoring service entities, provides that "this sentence shall not prohibit an exchange of customers for the customers of an unaffiliated alarm monitoring service entity." In its Comments on AICC's Motion, Ameritech explained how this language provided for an exception to the equity acquisition ban. It creates a safe harbor for exchanges that are accomplished by means of trading equity in corporations that hold only accounts.[20] AICC's explanation of this exchange of customers language is that it provides for an exception to the "financial

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[18] *In re Petition of Turner Broadcasting Sys., Inc.*, 101 F.C.C.2d 843, 848 (1985) (internal quotation marks, brackets, and italics removed; emphasis added). *See also Powell Crosley, Jr.*, 11 F.C.C. 3, 20 (1945) (same).

[19] AICC argues in its Reply Comments in No. 96-17 (at 4-5) that Ameritech obtained control over Circuit City's alarm monitoring business by purchasing all of Circuit City's alarm monitoring assets. However, Congress did not prohibit acquiring control of a line of business; it prohibited acquiring financial control over an alarm monitoring entity.

[20] Ameritech's September 6, 1996 Comments at 8-9.

control" ban.[21] This makes no sense at all. Even accepting AICC's assertion that the sale by an entity of all of its alarm monitoring assets somehow gives the buyer financial control over the selling entity, an even exchange of customers could not result in a BOC obtaining financial control over the non-BOC entity involved because that entity ends up with the same number of assets it started off with.[22] Therefore, AICC's explanation of the exchange of customers language--that it is an exception to the ban on acquiring financial control -- must be rejected. Since the term "financial control" could not, even under the broadest imaginable interpretation, encompass an even exchange of accounts, then it is AICC, not Ameritech, that can supply no independent meaning for the customer exchange provision. For that reason alone, contrary to AICC's position, the customer exchange provision provides no support for its position that the prohibition in Section 275(a)(2) covers acquisition of assets.[23]

III. Section 274's Structural and Transactional Separation Requirements Should Not Be Expanded Beyond the Statutory Requirements

At Paragraphs 32 through 48 of the NPRM, the Commission sought comment on a wide variety of separated affiliate and electronic publishing joint venture requirements set forth within Section 274. Parties arguing for a broad expansion

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[21] AICC at 25-26.

[22] AICC asserts that the exchange language only allows for equal exchanges. AICC at 26 n.46; AICC Reply Comments in No. 96-17 at 6.

[23] AICC makes numerous assertions about Congressional intent that have no support in the language or in the legislative history of Section 275. See, e.g., AICC Reply Comments in No. 96-17 at 3 ("the term 'financial control' is intended to be a broad concept"); Id. at 6 (the exception for exchanges "was agreed to partially out of a sense of fairness to Ameritech and predominantly because exchanges do not lead to growth"). These assertions should be given no weight.

beyond the statutory requirements established by Congress are incorrect, for several reasons.

First, while some parties urged the Commission to impose additional structural and transactional restrictions upon the BOCs beyond those set forth in Section 274,[24] no rational basis was offered for this plea. As the majority of commenters concluded, the structural and transactional safeguards of Section 274 are clear, self-executing, and comprehensive.[25] These commenters conclude that no further Commission rulemaking is necessary.[26] Unlike other sections of the 1996 Act in which Congress granted authority to the Commission to supplement a basic regulatory scheme with additional requirements,[27] Section 274 does not grant to the Commission the power to adopt additional substantive separation rules. Moreover, Section 274's requirement that the separated affiliate or joint venture be "operated independently" is not a separate substantive restriction but rather a statement of Congressional intent. This phrase is immediately followed by the specific requirements Congress envisioned as being necessary to accomplish that intent. Nothing suggests that Congress intended the phrase to be a source for additional structural and transactional restrictions.[28]

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[24] AT&T at 13; Time Warner Cable at 11-12.

[25] See, e.g., Bell Atlantic at 4-5; BellSouth at 9-10; SBC at 5; USTA at 3-4.

[26] See, e.g., US West at 5; YPPA at 4; BellSouth at 9-10; USTA at 3-4.

[27] BellSouth notes the contrast in its discussion of Section 273 of the 1996 Act. Section 273(g) specifically empowers the Commission to prescribe additional rules and regulations governing the operation of a separate BOC manufacturing affiliate. BellSouth at 10.

[28] See, e.g., NYNEX at 8-9; Pacific Telesis at 9; Bell Atlantic at 5-6; YPPA at 4.

Second, as the Commission and virtually every commenter noted,[29] the structural separation requirements of Section 274(b) are less rigorous for electronic publishing joint ventures than for separated affiliates. Congress unequivocally distinguished between electronic publishing joint ventures and separated affiliates, and the Commission must give effect to that differentiation to satisfy Congressional intent. One commenter maintains that the joint marketing freedoms for joint ventures are the only differences in the regulatory treatment of separated affiliates and joint ventures.[30] Quite to the contrary, the clear language of Section 274(b) does not subject electronic publishing joint ventures to the prohibitions relating to (1) common officers, directors, and employees with the BOC, (2) joint property ownership with the BOC, (3) BOC hiring or training of personnel, (4) BOC purchasing, installation, or maintenance of equipment, and (5) BOC research and development.[31]

Third, Ameritech urged the Commission to follow the plain language when construing each of the separation requirements of Section 274(b). In addition to maintaining electronic publishing joint ventures' exemption from the separation requirements of Sections 274(b)(5) and 274(b)(7) (see discussion above), the Commission should effectuate Congress' clear intent and follow many of its tentative conclusions by holding that:

1) The BOC and its separated affiliate may share property owned by one of the entities;

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[29] NPRM at ¶ 35; NYNEX at 8-9; BellSouth at 11; AT&T at 13; NAA at 4.

[30] Time Warner at 14-15.

[31] 47 U.S.C. §§ 274(b)(5) and 274(b)(7).

2) The BOC and the separated affiliate may jointly lease property;

3) The BOC may share research and development data with the separated affiliate as long as the R&D activity was not undertaken solely or primarily on behalf of the separated affiliate; and

4) A BOC may purchase, install, and maintain transmission equipment for the separated affiliate as long as the transmission equipment is an integral part of the BOC's provision of telephone service to the separated affiliate.

The vast majority of commenters urge the Commission to adopt similar positions on the issues enumerated above.[32] The few commenters advocating more expansive interpretations of many of the separation requirements of Section 274(b) either pervert the clear meaning of straightforward language or argue that their expansive interpretations further some subliminal Congressional intent.[33]

Fourth, the Commission should clarify that any combination or all of a BOC's electronic publishing services may be conducted through a single separated affiliate meeting the requirements of Section 274. The Commission should also recognize that electronic publishing services (Section 274 services) and interLATA information services (Section 272 services) may be provided through a single entity or affiliate. Nothing within the 1996 Act requires separation either between Section 274 services or between Section 272 and Section 274 services.[34] Moreover, Ameritech supports the assertion of many commenters[35] that an affiliate providing both Section 272 and Section 274 services

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[32] See, e.g., NYNEX at 9-10; BellSouth at 14-15; US West at 18-20; SBC at 8, 10-11; NAA at 5-6; USTA at 3-4; YPPA at 4.

[33] AT&T at 16-17; Time Warner at 12-13, 19-20.

[34] Ameritech at 11-12; AT&T at 19; Bell Atlantic at 7; US West at 3-4; BellSouth at 15-16; NYNEX at 4-5.

[35] YPPA at 5-6; Bell Atlantic at 7; US West at 4; Pacific Telesis at 13-14; NYNEX at 4-5.

must satisfy the separation requirements common to both Sections 272 and 274, but the separation requirements unique to either Section 272 or Section 274 would apply only to those services specified in each of those Sections.[36]

Fifth, Ameritech supports NYNEX's comments endorsing the performance by a Regional Holding Company of enterprise-level functions which support both a BOC and its separated affiliates.[37] These services would include corporate governance functions and enterprise-level administrative and support services (e.g., corporate secretarial functions, human resources, public relations, external affairs, real estate, and information systems). Nothing within Section 274 or its legislative history would suggest that a Regional Holding Company should be precluded from providing these administrative and support services to both a BOC and its separated affiliates. As NYNEX observes, "[p]ermitting the performance of each of these functions on a common, centralized basis separate from both a BOC and its separated affiliate will promote economic efficiency, without compromising the operational separateness of the BOC and its section 274 affiliate(s)."[38]

IV. Micro-Regulation is Inconsistent With and Contrary to the 1996 Act

There is no disagreement among the commenters in this proceeding that the Telecommunications Act of 1996 is intended to foster competition through a new

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[36] Pacific Telesis provides an illustrative example. Since Sections 272 and 274 both require books, records, and accounts separate from the BOC, this requirement would apply to the entire entity. However, because Section 272 does not prohibit the hiring and training of personnel, this limitation would only apply with respect to the entity's electronic publishing activities. Pacific Telesis at 14.

[37] NYNEX at 10-18.

[38] NYNEX at 14.

national policy framework that has a decreasing emphasis on regulation with a corresponding opening of telecommunication markets to competition.[39] Even acknowledging this Congressional intent, however, some of the comments filed would have the Commission shift dramatically in the opposite direction and urge instead the adoption of a multiplicity of restrictions which would act as barriers to full competition. These comments -- curiously noting the Act's de-regulatory emphasis while simultaneously advocating significantly increased regulation -- simply miss the boat on the goals of the Act established by Congress.

For example, a few commenters urge the Commission to adopt a variety of restrictions beyond those plainly required by the Act. Time Warner, AT&T and MCI, each urge the Commission to create new "limits," "restrictions" and "requirements" that will impede the competitive framework of the Act.[40] For example, Time Warner proposes that a separated affiliated electronic publisher or electronic publishing joint venture be prevented from: (1) sharing space with BOC facilities; (2) sharing computer facilities with the BOC; (3) developing software with the BOC; and (4) marketing any other equipment or services to any affiliate. Time Warner simply "tossed out" these

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[39] For example, many commentators cited the Joint Statement Of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) ("Explanatory Statement") which provides the Act is intended to:

> "provide for a pro-competitive de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."

[40] For example, see Comments of Time Warner Cable, pages 13-15; Comments of AT&T, pages 13-18 and Comments of MCI, page 4.

proposals -- without any form of legislative support, asking this Commission to do something it lacks authority to do -- re-write a federal statute.[41]

Such new restrictions are not mentioned, compelled or required by the Act -- indeed, they are contrary to the deregulatory emphasis of the Act. These restrictions seek only one thing -- to restrict the ability of the BOC and its affiliates to fully compete against Time Warner and others. These proposed restrictions do not seek to foster competition -- they overtly seek to restrict it. The ultimate result of this approach would be reduced competition and higher prices for new electronic publishing services for consumers.

Time Warner also asks the Commission to re-write Section 274(b)(6) concerning the use of trade names, trademarks and service marks.[42] Section 274(b)(6) allows a BOC and its separated affiliate (or joint venture) to use the "names, trademarks, or service marks that are owned by the entity that owns or controls the Bell operating company." This provision allows an Ameritech BOC and an Ameritech electronic publishing separated affiliate to both use the trademarks of Ameritech Corporation since Ameritech Corporation -- as the parent holding company corporation -- "owns" and/or "controls" both entities.[43] Despite this clear and unequivocal language, Time Warner argues:

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[41] For example, see page 12 of Time Warner's Comments where it suggests the Act requires "amplification." See also, page 14 of AT&T's Comments where it suggests "the Commission is authorized to adopt whatever additional regulations it deems necessary."

[42] Comments of Time Warner Cable, page 16.

[43] Section 274(i)(4) defines "control" as provided in the SEC Regulations (17 CFR 240.12b-2) and Section 274 (i)(8) defines "own" as equity ownership of greater than 10%.

> (i)t makes no sense, therefore, to permit affiliates and joint ventures to use names, trademarks, or service marks that BOC operating companies share with the Regional Bell Holding Companies.[44]

This argument ignores the plain language of the Act and, once again, asks the Commission to impose a greater restriction than the Act requires -- and directly counter to -- what the Act permits.[45]

Likewise, Time Warner's proposal that the BOCs should file with the Commission the rates the BOCs charge separated affiliates for various services, would regress to the pre-1996 Act regulatory scheme.[46] This proposal would have this Commission to reinstate the former regulatory regime -- through the filing of what essentially is a tariff. Such regulation was explicitly rejected by Congress. Time Warner's proposal would: (1) place an unnecessary and costly burden on the BOCs; (2) violate the de-regulatory nature of the Act; and (3) impede competition by forcing one competitor to make a filing not required of other competitors.

Such pleas are for "business as usual" under an outmoded telecommunications policy, and fail to recognize the fundamental shift that has taken place as a result of the Act.[47] The "old school" regulatory approach which relied on extensive regulation and

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[44] Comments of Time Warner Cable, page 17.

[45] Additionally, as discussed in Section VI, Time Warner, AT&T and MCI seek to engraft the Computer II and III rules into the Telecommunications Act urging the Commission to include those rules as additional requirements under the Act. Congress chose not to adopt the Computer II and III rules in Section 274. The Commission should not override Congressional intent by adopting Computer II and III as part of Section 274. In addition, as Time Warner pointed out, the Computer III rules "have not been useful." Comments of Time Warner Cable, page 22.

[46] Comments of Time Warner Cable, page 22.

[47] For example, Time Warner quarrels with the Commission's characterization that an electronic publishing joint venture can be "an 'alternative' to structural separation." (Comments of Time Warner

theoretical potential anti-competitive behavior has been thrown out by Congress and replaced by a pro-competitive, deregulatory approach.

V. Joint Marketing Issues

A few commenters continued their theme of urging the Commission for greater and greater "limits" and "restrictions" in its discussion of the joint marketing rules of Section 274. In so doing, they ignore the permissible marketing activities authorized by this Section. The first words employed by Congress in Section 274(c) -- "[e]xcept as provided in paragraph (2)" -- make it clear that the joint marketing prohibitions must "give way" to permitted joint marketing activities authorized under Section 274(c)(2). Time Warner, AT&T and MCI, in beating the drum for additional regulation and joint marketing restrictions, fail to note that the BOC is entitled to engage in a variety of electronic publishing marketing activities under the Act. More specifically, the BOC can provide "inbound telemarketing and referral services" for electronic publishers, team with electronic publishers, enter into "business arrangements" with electronic publishers, enter into electronic publishing joint ventures and market its own services to be used for electronic publishing services. Ameritech submits that the scope of these permitted BOC activities is reflective of Congressional intent to foster the competition and development of electronic publishing services. Arguments supporting restrictive joint marketing prohibitions are is at odds with the expansive scope of permitted

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Cable, page 10.) If the Act allows electronic publishing to be provided through either a separated affiliate or joint venture, how can joint venture not be an alternative to the separated affiliate?

activities under the Act. Simply put, the BOC may market services with an electronic publisher as part of any permitted joint marketing activity.

For the same reasons, these arguments miss the mark in suggesting that the BOC cannot offer "bundling discounts" with electronic publishers.[48] In all cases of permitted joint marketing activities, a "bundling discount" may be offered to the customer. While the BOC requires regulatory authority to discount regulated services, the electronic publisher is free to set its unregulated price -- and any promotional discounts -- as it sees fit. If the electronic publisher adopts a "bundling discount," consumers will benefit, the BOC ratepayers will benefit and the Congressional intent of robust electronic publishing competition will be realized. Further, the "bundling discount" can be offered by *any* electronic publisher -- including unaffiliated publishers engaged in joint marketing with the BOC. Contrary to Time Warner's suggestion, "bundling discounts" as part of permissible joint marketing activities should be encouraged rather than restricted.

The BOCs' participation in "inbound telemarketing and referral services" and "teaming or business arrangements" is conditioned upon the BOC doing so on a "nondiscriminatory" basis. Thus, even if a BOC provides inbound telemarketing services to -- or teams with -- its electronic publishing separated affiliate, the separated affiliate gains no competitive advantage since the BOC must be willing to enter into similar arrangements with other electronic publishers on a nondiscriminatory basis.

Time Warner, AT&T and MCI continue to advocate a traditional regulatory approach in suggesting that transactions between a BOC and a separated affiliate be

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[48] Comments of Time Warner Cable, page 26.

curtailed and restricted. The Act delineates in Section 274(b) a few types of prohibited activities between the BOC and its separated affiliate. Beyond the specifically enumerated activities, the Act contains no restrictions on transactions that may occur between such entities.[49] Time Warner, AT&T and MCI urge this Commission to retreat to a regulatory scheme that has been rejected by Congress in the Telecommunications Act. Congress has explicitly chosen not to adopt the restrictions proposed by these commenters.

VI. The Outmoded Computer Inquiry III Regime Should Not Be Continued

The Commission also sought comment on the continued applicability, under the 1996 Act, of its earlier Computer Inquiry III ("CI-III") regulatory regime.[50] Predictably, the retention of that badly-outmoded regime was supported by the same parties who argued in last year's CI-III Remand proceeding[51] for the imposition of even more onerous restrictions on BOC participation in the now-flourishing enhanced services industry.[52] In fact, they do so despite the undisputed facts that the U.S. enhanced services marketplace has grown to exceed an estimated $3 Billion in annual revenues, and that the BOCs' combined presence in that marketplace has been estimated at less

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[49] This is, of course, with the exception of the requirement that such transactions be pursuant to tariff or written contract. Section 274(b)(3).

[50] See, e.g., NPRM, ¶¶ 65, 66, 74, 77.

[51] In the Matter of Computer Inquiry III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, Notice of Proposed Rule Making, rel. February 20, 1995 (hereinafter "CI-III Remand NPRM").

[52] MCI at 6-8. One party actually urged the Commission to return to its long-abandoned structural separation requirement for all local exchange carriers, for all telemessaging services. Comments of VoiceTel, at 3. This self-serving plea should clearly be rejected out of hand.

than 20%.[53] Moreover, through 3 decades of Commission inquiries into BOC provision of enhanced services,[54] no ESP -- not even IBM, AT&T, GE, or any other well-heeled, sophisticated industry giant -- has ever petitioned the FCC for redress of a refusal, by Ameritech or any other BOC, to provide a requested new basic service element.

It is difficult to imagine a plainer case in favor of Congress' stated intent to let the unconstrained forces of competition order the marketplace. The CI-III requirements were, and are, simply a solution in search of a problem. As such, they should be permitted to collapse of their own weight, giving way instead to Congress' mandate of competition instead of regulation. In its pending CI-III Remand proceeding (for which the pleading cycle closed some 17 months ago), the Commission has before it a thorough and complete record in support of the abolition of this complex and outmoded regulatory structure. No further justification is required here; the Commission was charged by Congress to let the marketplace and customer choice reign.

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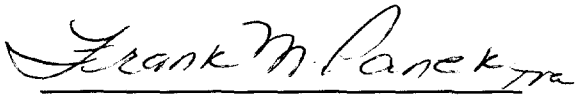
[53] CI-III Remand NPRM, Comments of Ameritech (filed April 7, 1995), at 8-9.

[54] It was November 9, 1966 when the Commission first noted that "the growing convergence of computers and communications has given rise to a number of regulatory and policy questions within the perimeter of the Communications Act." In the Matter of Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities, Docket No. 16979 ("Computer I"), Notice of Inquiry, adopted November 9, 1966, 7 FCC 2d 11 (¶ 2).

VII. Conclusion

Ameritech urges the Commission to implement sections 260, 274 and 275 of the 1996 Act in the pro-competitive, de-regulatory manner envisioned by Congress.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Reply Comments of Ameritech has been served on the parties listed on the attached service list, by first class mail, postage prepaid, this 20th day of September 1996.

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